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SUBJECT: Japanese Government, Industry reluctant to back WTO case
against China on IPR

REF: TOKYO 2326, TOKYO 1270

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11. (SBU) Summary Japanese officials, particularly in the Trade Ministry, responded coolly to USTR's request that Japan join the United States in an IPR case against China in the next few months, saying that the GOJ was still studying the issue and could not respond until the fall at the earliest -- probably after the new government is in place. Foreign Ministry officials advised USTR that nothing can be done until Trade Minister Nikai leaves, and that the USG needs to raise its request at the political level.

12. (SBU) Lack of support for a WTO case among Japanese business is adding to GOJ hesitation. Japanese industry groups told USTR that most of their members did not support the proposed WTO case because they prefer a more "cooperative" approach towards China for now -- in other words, they fear a backlash from the Chinese government. Japanese copyright companies are more concerned about market access than the black market in China for now.
End Summary.

Background

13. (SBU) USTR's Chief Negotiator for IPR Enforcement, Stanford McCoy met with officials of the Ministry of Foreign Affairs (MOFA), the Ministry of Economy, Trade and Industry (METI), the Intellectual Property Strategy Headquarters (IPSH), and with private sector representatives at the Japan External Trade Organization (JETRO) and the Japan Intellectual Property Association (JIPA) in Tokyo on June 13 and June 14. USTR had held an earlier set of meetings in Tokyo with GOJ officials in late February 2006. The proposed WTO case would focus on the fact that thresholds for criminal penalties in Chinese law are set too high to capture much of the IPR-infringing commercial activity in China. For McCoy's discussions with the same officials on a proposed Anti-Counterfeiting Trade Agreement see Tokyo 2567.

METI stalls

¶4. (SBU) Opening a joint METI-MOFA meeting, Shigehiro Tanaka, Director of METI's WTO Affairs office, stressed that Japan needed more time to study the issue and gather information from industry, and could not decide whether to join as a co-complainant before the fall. They will "decide on basis of what is the most effective way to proceed." Tanaka added that if the United States initiates WTO consultations in July, Japan was likely to be a supportive third party. He said that he did not want to leave the U.S. with false expectations and that the GOJ was proceeding with an open mind.

¶5. (SBU) In response to McCoy's question asking whether the political level had already looked at the issue, Tanaka responded that the Minister was aware of the situation and that METI needed to prepare a thorough analysis which would not be ready until the fall. Tadaatsu Mohri, Principal Deputy Director of MOFA's International Trade Division, added that MOFA was in the process of preparing a briefing for FM Aso which would cover both the IPR and auto parts cases.

¶6. (SBU) Tanaka noted that Trade Minister Nikai had raised the thresholds issue in a letter to Chinese Commerce Minister Bo, pointing out that as currently written the thresholds for criminal penalties appeared to be inconsistent with WTO rules.

¶7. (SBU) Tanaka explained that METI sees some progress in its dealings with the Chinese government. In recent talks with Chinese Supreme People's Court and the Procuratorate, the GOJ raised the issue of thresholds and the Chinese acknowledged that the issue is a problem of IPR enforcement. However, the Chinese officials claimed that the issue is not just a matter of law, but more a social problem which needed to be dealt with through public education. Harsh laws would not work, they said, citing a story about the failure of an ancient Chinese emperor which was repeated by other Chinese officials, also. Tanaka pointed out that now the National People's Congress also wants to insert itself into the discussion

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and has declared that the Chinese government must consult it when determining the interpretation of its laws.

¶8. (SBU) Tanaka asked about the EU's position on the case and McCoy replied that the EU is studying the issue, and that the final decision will probably be a political decision taken by EU Trade chief Peter Mandelson.

MOFA more supportive, more candid

¶9. (SBU) Before the joint meeting with METI, MOFA's Mohri forewarned that METI was insisting that nothing could happen with respect to Japan's participation as a co-complainant until fall, but offered no explanation to MOFA on why. MOFA concluded that METI would not be able to make any decision on the proposed WTO case until Trade Minister Nikai leaves when the new Japanese government is chosen in September. (Comment: Nikai is considered the Japanese cabinet minister with the best relationship with China and someone who wants to keep the warm Japan-China business relationship on an even keel despite frosty relations in some other areas. End Comment.)

¶10. (SBU) Mohri also cautioned that selling a WTO case on IPR was going to be even tougher within the GOJ than the WTO auto parts case because private industry was not on board and was more concerned about a Chinese backlash than the issues in the case. (Note: Japan declined to join the U.S. and EU in an auto parts case against China, but signed on as a Third Party. End Note.)

¶11. (SBU) Both METI and MOFA officials underscored that there is stronger support among Japanese industry for GOJ action on trademarks and counterfeits, and much less on copyright piracy than among U.S. industry. Moreover, Japanese industry is less concerned about criminal thresholds and prefers to focus on administrative penalties, according to Tanaka. McCoy pointed out that the threshold problem affects both copyright and trademark industries and that USTR had hoped that by working together Japan could bolster a joint U.S.-Japan case with information on both copyright and

trademark infringement in China.

Main obstacle is lack of industry support

¶12. (SBU) At a follow-up meeting, METI and MOFA attorneys agreed that the lack of industry support was the main obstacle to Japan joining the United States in a WTO case. Major Japanese companies like Toyota and Panasonic deal with whole manufactured products, not parts, and are not particularly interested in the issue. Smaller companies don't really understand how the legal issues affect them, they explained.

¶13. (SBU) METI attorneys also pointed out that the Japanese copyright industry was just starting out in China and worried about getting Chinese government permissions and did not want to rock the boat. As a result, the GOJ would have to convince the copyright industry to support a WTO case. Further complicating the situation is the fact that METI does not cover the copyright industries; the Agency for Cultural Affairs does. Thus, METI has no Copyright industry constituency coming to them with complaints.

IPR Industry Group does not back WTO case

¶14. (SBU) Japan Intellectual Property Association (JIPA) representatives stated clearly that they did not support a WTO case against China. Taisuke Kato, Toshiba's General Manager for Intellectual Property, told the U.S. delegation that JIPA is working with Chinese officials to improve their enforcement capacity. e.g. training Chinese Customs officers to recognize fakes. JIPA, which is working closely with METI and JETRO on IPR problems in China, feels that Japan has asked China to take certain measures and now must wait to see how the Chinese respond. For them, it is not the right time to take a case against China at WTO, he asserted.

¶15. (SBU) Kato also launched into a mini-lecture, stating that "Each

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side, each country has to take action in its own way." "The Japanese style is that is it better to discuss and exchange information with China," he explained. Kato said that they "understand that the United States thinks it needs to do something as soon as possible, but that Japan sees it differently." "Japan is asking China to live up to its WTO obligations" and that "China has said they will try to improve." Therefore JIPA and the Japanese government are JIPA waiting to see what the Chinese response will be over the next one to two years, according to Kato.

No support from JETRO either

¶16. (SBU) JETRO's Director-General for Economic Research Shiro Mori stated forthrightly that the GOJ and industry do not want to add more friction to an already difficult political relationship with China or harm Japan's business interests. Japanese companies worry most about Chinese government interference and retaliation and don't want to risk damaging their relationship with the Chinese government, Mori acknowledged. This is especially true for new entrants to the Chinese market. As a result, Japan is reluctant to take actions that might seem confrontational and prefers to look for ways to cooperate and assist China to improve IPR enforcement, Mori explained. He admitted that some Japanese companies do want GOJ to take a harder line, but many others oppose that.

¶17. (SBU) For Japan's copyright industry, the Chinese market is still insignificant, Mori added. Their first priority is gaining market access. Mori said that he had not yet heard any complaints about the thresholds issue from Japanese industry. JETRO has only recently started to promote Japanese content into the Chinese market and is not yet far enough along to be concerned about the black market.

¶18. (SBU) Comment: GOJ officials do not want to say no outright to the U.S., but seem to want to buy time before making a decision on a WTO case against China. It is possible that the dynamics could

change with a change in government in the fall, with a Trade Minister less personally invested in relations with China. High-level U.S. engagement would increase the pressure and could make a difference. However, given the GOJ's current policy of engagement with the Chinese government on IPR issues and the lack of support from Japanese industry, it appears that the GOJ would have a hard time gathering the support internally and among Japanese industry for joining the United States anytime soon.

¶19. (U) This cable has been cleared by Standford McCoy, USTR Chief Negotiator for IPR Enforcement.
SCHIEFFER